

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

RODNEY JAMES MILLS,

Plaintiff,

v.

J. AGURKIS, *et al.*,

Defendants.

Case No. 2:22-cv-01675-JDP (PC)

ORDER GRANTING PLAINTIFF'S  
APPLICATION TO PROCEED IN FORMA  
PAUPERIS

ECF No. 10

SCREENING ORDER THAT PLAINTIFF:

(1) STAND BY HIS COMPLAINT  
SUBJECT TO A  
RECOMMENDATION OF  
DISMISSAL;

(2) FILE AN AMENDED  
COMPLAINT

ECF No. 1

THIRTY-DAY DEADLINE

Plaintiff, a pre-trial detainee at the Butte County Jail, alleges that medical personnel at the jail have refused to provide him with Suboxone, a prescription opioid that had been prescribed to him prior to intake at the jail. He has named four defendants: (1) J. Agurkis, a correctional lieutenant; (2) Hovey, the jail commander; (3) Tarah Foster, the jail medical director; and (4) the

1 Butte County Jail itself. ECF No. 1 at 2-3. The complaint fails to allege a cognizable claim  
2 against any defendant. I will give plaintiff an opportunity to amend before recommending this  
3 action be dismissed. Additionally, I will grant plaintiff's application to proceed *in forma*  
4 *pauperis*. ECF No. 10.

5 **Screening Order**

6 **I. Screening and Pleading Requirements**

7 A federal court must screen the complaint of any claimant seeking permission to proceed  
8 *in forma pauperis*. *See* 28 U.S.C. § 1915(e). The court must identify any cognizable claims and  
9 dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon  
10 which relief may be granted, or seeks monetary relief from a defendant who is immune from such  
11 relief. *Id.*

12 A complaint must contain a short and plain statement that plaintiff is entitled to relief,  
13 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its  
14 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not  
15 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.  
16 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere  
17 possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not  
18 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg'l Med. Ctr.*, 832 F.3d 1024,  
19 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that  
20 give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264  
21 n.2 (9th Cir. 2006) (en banc) (citations omitted).

22 The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404  
23 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it  
24 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which  
25 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).  
26 However, “a liberal interpretation of a civil rights complaint may not supply essential elements  
27 of the claim that were not initially pled.” *Brunsv. Nat'l Credit Union Admin.*, 122 F.3d 1251,  
28 1257 (9th Cir. 1997) (*quoting Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

1           **II.       Analysis**

2           Plaintiff alleges that on July 28, 2022, he was seen by unidentified medical staff at Butte  
3 County Jail. ECF No. 1 at 12. He requested Suboxone and informed staff that his private  
4 physician had previously prescribed this medication. *Id.* Staff told him that the medication could  
5 not be prescribed because they had not been informed of the prescription during intake. *Id.* The  
6 remainder of the complaint is devoted to plaintiff's attempts to get his prescription and to have his  
7 medical care placed in the control of his private physician. *Id.* at 12-15. These allegations do not  
8 explain how each of the defendants personally violated plaintiff's rights.

9           The supervisory defendants—Hovey and Foster—are not mentioned in the body of the  
10 complaint. And there is no *respondeat superior* liability under section 1983, to the extent  
11 plaintiff seeks to hold them liable under such a theory. *See Jones v. Williams*, 297 F.3d 930, 934  
12 (9th Cir. 2002) (“In order for a person acting under color of state law to be liable under section  
13 1983 there must be a showing of personal participation in the alleged rights deprivation: there is  
14 no *respondeat superior* liability under section 1983.”).

15           Defendant Agurkis is alleged to have responded to plaintiff's administrative grievances  
16 regarding his want of Suboxone. Merely responding to a grievance, however, does not give rise  
17 to a constitutional violation. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003). And  
18 Agurkis is not alleged to have had any other responsibility or involvement in plaintiff's medical  
19 care.

20           Finally, the Butte County Jail is not a viable defendant in a section 1983 action. *See, e.g.*,  
21 *Vance v. County of Santa Clara*, 928 F. Supp. 993, 996 (N.D. Cal. 1996) (“Naming a municipal  
22 department as a defendant is not an appropriate means of pleading a § 1983 action against a  
23 municipality.”) (citation omitted).

24           Plaintiff may file an amended complaint. He is advised that the amended complaint will  
25 supersede the current complaint. *See Lacey v. Maricopa County*, 693 F. 3d 896, 907 n.1 (9th Cir.  
26 2012) (en banc). This means that the amended complaint will need to be complete on its face  
27 without reference to the prior pleading. *See* E.D. Cal. Local Rule 220. Once an amended  
28 complaint is filed, the current complaint no longer serves any function. Therefore, in an amended

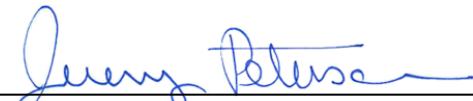
1 complaint, as in an original complaint, plaintiff will need to assert each claim and allege each  
2 defendant's involvement in sufficient detail. The amended complaint should be titled "First  
3 Amended Complaint" and refer to the appropriate case number.

4 Accordingly, it is ORDERED that:

5 1. Plaintiff's application to proceed *in forma pauperis*, ECF No. 10, is GRANTED.  
6 2. Within thirty days from the service of this order, plaintiff must either file an amended  
7 complaint or advise the court of his intent to stand by his current complaint, subject to a  
8 recommendation that this action be dismissed for failure to state a claim.  
9 3. Failure to comply with this order may result in the dismissal of this action.  
10 4. The Clerk of Court is directed to send plaintiff a complaint form.

11 IT IS SO ORDERED.

12 Dated: January 23, 2023

  
13 JEREMY D. PETERSON  
14 UNITED STATES MAGISTRATE JUDGE

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